

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of HENDRIX, Minors.

UNPUBLISHED

June 5, 2014

No. 318319

Wayne Circuit Court

Family Division

LC No. 05-441436-NA

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Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right the order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions that led to adjudication continue to exist and no reasonable likelihood they will be rectified), (c)(ii) (other conditions exist and no reasonable likelihood they will be rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). We affirm.

**I. FACTUAL BACKGROUND**

The two children at issue in this case were removed from their mother's care in 2009, based on allegations of her continual drug use, the prior termination of her two other children, and her failure to benefit from previous services. The court assumed jurisdiction over the children and placed them with respondent.

In October 2010, another petition was filed, in which petitioner requested termination of the mother's parental rights. Petitioner also alleged that respondent had placed the children at risk by leaving them in the care of the mother, even though he knew of her drug use, anger issues, and prior CPS involvement. Petitioner also alleged that respondent was without suitable housing. The court assumed jurisdiction over the two children, and eventually terminated the mother's parental rights.

The court provided respondent with a treatment plan and ordered that the children have no contact with the mother. The case eventually proceeded to termination on January 11, 2013, as respondent had not completed his parenting classes. The court found insufficient evidence of the statutory grounds for termination, and declined to terminate respondent's parental rights.

After the hearing, respondent's participation in the proceedings declined. He failed to visit the children for approximately seven months, was again terminated from his parenting

classes because of lack of participation, and had not obtained suitable housing. Thus, the case proceeded to another termination hearing on July 24, 2013.

Ultimately, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions that led to adjudication continue to exist and no reasonable likelihood they will be rectified), (c)(ii) (other conditions exist and no reasonable likelihood they will be rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). The court also found termination was in the children's best interests. Respondent now appeals.

## II. TERMINATION OF PARENTAL RIGHTS

### A. STANDARD OF REVIEW

We review for clear error a trial court's determination that a statutory ground has been proven by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Respondent also challenges the best interests finding, which we review for clear error. *Id.* "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

### B. MCL 712A.19b(c)

Respondent's parental rights were terminated under MCL 712A.19b(3)(c), which provides:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

In regard to MCL 712A.19b(3)(c)(i), the court assumed jurisdiction over the children in January 2011 because respondent permitted their mother to care for them, despite knowing of her drug use, mental health issues, anger management, and past DHS history. To rectify this situation, the court ordered respondent to keep the children away from the mother. However, the children informed the foster care worker that their mother was present when respondent had the children, even after the mother's parental rights were terminated. The foster care worker discussed it with respondent, reminded him that the children should not be visiting their mother, and respondent promised to keep the children away from the mother. However, at the second termination hearing, the foster care worker testified that the children again informed her that respondent exposed them to their mother as recently as July 2013. The foster care worker was

concerned that, given her repeated warnings that respondent ignored, he was unable to properly care for and protect his children.

Another issue leading to adjudication was respondent's lack of suitable housing, as he was residing in a room at his place of his employment. Even if respondent's sister's home—where respondent resided at one point—was suitable, respondent specifically testified “that’s not where I want the kids to live. I want them to live on Somerset.” However, respondent never obtained such housing. At the time of the second termination hearing, respondent proposed yet another home on University Drive. Although the foster care worker asked respondent to meet her to evaluate that home, respondent failed to call her and arrange for that meeting. Significantly, the foster care worker testified that this was the fourth house that respondent claimed he was in the process of preparing for the children. Thus, respondent had not resolved the issue of housing. See, e.g., *In re Laster*, 303 Mich App 485, 493; 845 NW2d 485 (2013) (“In the approximately two years that the children were in the court’s temporary custody, respondent-mother failed to obtain suitable housing.”). Accordingly, the trial court did not err in terminating respondent’s parental rights under MCL 712A.19b(3)(c)(i).

With respect to MCL 712A.19b(3)(c)(ii), in its written report the referee mentioned respondent’s violation of the court order prohibiting contact with the mother, the housing issue, respondent’s failure to regularly visit his children, and his failure to complete parenting classes. As noted, the evidence established that respondent had exposed the children to their mother in direct violation of the court order, and had failed to resolve his housing situation. Moreover, the foster care worker testified that respondent failed to visit his children consistently in the prior two years and failed to visit his children from December 2012 until May 2013. Respondent also failed to complete parenting classes, despite multiple referrals. Respondent had ample time to rectify these issues, but did not. Given these circumstances, we find that the trial court did not clearly err in terminating respondent’s parental rights under MCL 712A.19b(3)(c)(ii).

#### C. MCL 712A.19b(3)(g)

The court also relied on MCL 712A.19b(3)(g), which provides: “The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

Respondent was aware of the mother’s marijuana use, her prior CPS involvement, and her anger management/mental health issues. Yet, he permitted her to care for the children, thereby exposing them to the risk of harm. This, coupled with his unsuitable housing, established a failure to provide proper care or custody for his children. Moreover, at the time of the second termination hearing, respondent again violated the no contact order by allowing the children to have contact with the mother, and he still had not established housing for them.<sup>1</sup>

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<sup>1</sup> While respondent challenges the foster care worker’s testimony regarding the children’s contact with their mother, “[i]t is not for this Court to displace the trial court’s credibility determination.”

Respondent argues that it is mere conjecture to suggest he would permit further contact between the children and their mother. This is belied by respondent's *repeated* violations of the court order prohibiting such contact. Considering his repeated failure to make progress or comply with the court orders, the trial court did not err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the children's ages. MCL 712A.19b(3)(g).<sup>2</sup>

#### D. BEST INTERESTS

Respondent also challenges that termination was not in the children's best interests. In determining the children's best interests, a court may consider the children's bond to the parent, the parent's parenting ability, the children's need for permanency, stability, and finality, and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App at 41-42.

In finding that termination was in the children's best interests, the court observed that the children had been with their maternal grandmother for almost three years, and she was willing to adopt them. The court found that the children were thriving in their current placement and needed permanency for their continued growth and development.

Respondent, however, contends that the court erred in terminating his parental rights in light of the children's placement with a relative. As we have previously explained, "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." *In re Olive/Metts Minors*, 297 Mich App at 43. Here, the court explicitly considered the children's placement with the grandmother. However, the court ultimately found that "[b]oth of the children deserve permanency." While respondent argues that guardianship was a viable alternative, that would not produce the desired permanence and stability that accompanies the finality of termination. Moreover, the relative was not amenable to a guardianship, and wanted to adopt the children.<sup>3</sup>

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*In re HRC*, 286 Mich App 444, 460; 781 NW2d 105 (2009). Moreover, although respondent argues he could have provided proper care for his children by means of a guardianship with their grandmother, respondent exposed the minors to their mother in violation of a court order while the minors were staying with their grandmother, thereby failing to demonstrate proper care or custody.

<sup>2</sup> While the trial court also terminated respondent's parental rights under MCL 712A.19b(3)(a)(ii) and (j), we decline to address those arguments because only one statutory ground need be established in order to terminate respondent's parental rights. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

<sup>3</sup> While respondent cites to an unpublished case to conclude that the grandmother's preference was of no relevance, he has misconstrued the language in that case. See *In re Kirby*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2013 (Docket No. 314148) (unpub at 4). The panel in that case reiterated that the relatives' preference was not relevant in determining *whether the statutory grounds for termination exist*. *Id.* The panel expressly declined to consider whether termination in that case was in the child's best interest. *Id.*

Respondent also contends that the trial court's decision is clearly erroneous given his bond with the children. However, a parent's bond with his children is not the only relevant factor. See *In re Olive/Metts*, 297 Mich App at 41-42. The foster care worker recommended termination because the children needed stability and permanency, which they had found with their grandmother who was willing to adopt them. Further, respondent continued to expose the children to harm when he violated court orders and permitted contact with their mother. He also failed to obtain suitable housing or complete parenting classes.

Therefore, we find no error in the trial court's best interest analysis.

### III. CONCLUSION

The trial court did not err in finding sufficient evidence of the statutory grounds for termination and that termination was in the children's best interests. We affirm.

/s/ Michael J. Riordan  
/s/ Pat M. Donofrio  
/s/ Karen M. Fort Hood